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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 621 of 1994

with

first appeals nos. 622,624,626 and 627 of 1994

WITH

first appeals Nos. 628/94 to 634/94

with

first appeals nos. 1616/95 to 1624/95

with

first appeals nos.3161/95 to 3174/95

with

first appeals nos. 635/94 to 691/94

with

first appeals nos. 1365/97 to 1395/97

with

Civil application Nos. 115 to 145/98 (for stay)

in

first appeals Nos.

with

Civi Aplicatios Nos.4 499 of 1997 (for extension of
time)

in

First appeal No. 1365 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SPL. LAND ACQISITION OFFICER

Versus

Appearance:MR P.G.DESAI,GOVERNMENT PLEADER FOR APPELLANTS IN
F.A..Nos. 621,622,624,626 and 627 of 1994.
F.A.Nos. 1616 to 1629 of 1995
F.A.Nos. 635 to 664/94
F.A.Nos. 1365 to 1380/97,

Mr.A.J.Desai,Asstt.Govt.Pleader for appellants in
F.A.Nos. 628 to 634/94
F.A.Nos. 3161 to 3174/95
F.A.Nos. 1381 to 1395/97.
F.A.Nos. 665 to 691/94.
Mr. Vipul Modi,advocate for respondents-claimants
in all the appeals .

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA
Date of decision: 29/01/98

ORAL JUDGEMENT Coram- Bhatt,J.

In this group of first appeals, common questions are involved.Therupon, upon joint request, they are being heard simultaneously and are being disposed of by this common judgment.

In this group of appeals under Section 74 of the Land Acquisition Act, 1894 ('the Act'), the appellants have questioned the legality and validity of different awards in connection with land acquisition for common project known as Sipu project at Palanpur .

For the said project, notifications came to be published under Section 4 (1) and followed by Section 6 (1) notifications for acquisition of agricultural lands of respective claimants situated in different adjoining villages. After undergoing the requisite procedure, the land acquisition officer (the appellant in this group) acquired the lands of the respondents-original claimants and passed impugned awards under Section 11 of the Act in various land reference cases out of which, we are concerned with certain land reference cases and resultant appeals particulars whereof are highlighted in the following tabular form:

Appeal No.	Date of Sec.4 notifn. court.	Land Ref. case No.	Village	Date of award by Ref.	Ref.court awarded Rs
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621	26.1.84	195 to	Dhaneri	31.5.93	Rs.3
622,	201/87			per sq.mt.	
624,					
626 &					
627/94.					

628 to	4.6.81	16 to 32	Panshvas	7.4.93	Rs.2.50 per
634/94		of 1987		sq.mt.	

635 to	25.10.	276 to	Ganodara	5/4/93	.do.
691/94	1979	332/1987			

1616 to	22.7.80	2 to	Rampura	11.3.94	.do.
1629/95		15/87	Mahudi		

3161 to	18.4.85	1094 to	Rampura	11.3.94	Rs.3/-per
3174/95		1107/88	Mahudi		per sq.mt

Moti

1365 to	20.7.79	163 to	Mahudi	1..5.96	Rs.3.50
1395/97		193/87			per sq.mt.

Learned advocate Mr.Modi pointed out that this group of matters is covered in identical and forming part of acquisition of the lands of the same project ,by the following decisions of this court:

No.of first appeal	Decided by	Amount awarded
	Div.Bench	by this court.

995 to 1000/93	B.N.Kirpal,.C.J	Rs 5/- per sq.mt.
	and R.,K.	
	Abichandani.J.	

The following aspects have remained unquestionable and undisputed:

- (i) that the agricultural lands belonging to the claimants have been acquired for the same project known as Sipu reservoir project, Palanpur and are covered by the aforesaid decisions of this court;
- (ii) the amount of compensation assessed and evaluated in the Division Bench decisions of this court in first appeals Nos. 995 to 1000/93 decided on 22.7.1994 at Rs. 5/- per sq .mt. has become final and was the highest amount; whereas, in the present group of appeals, the amount of compensation awarded is Rs. 3.00, 2.50, 2.50, 2/50 ,3.00 and 3.50 per sq.mt. Thus, the amount awarded by way of compensation under Section 23 in the present appeals by the Reference court is less than the amount of compensation in the said decision which has become final. This aspect is not at all disputed.

The Reference court has directed to award 5% of the amount of compensation in case of acquisition of new tenure land. This common direction contained in all land reference cases by the reference court in its awards under Section 18 of the Act is required to be modified in view of the decision of the Honourable Apex court in State of Maharashtra vs. Babu Govind, AIR 1996 S.C. 904. It has been clearly held in this decision by the Honourable apex court that any direction for recovery by Government in light of the provisions of Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1947 is not applicable to compulsory acquisition cases. Since this dispute is no longer res-integra, and also not in question, that part of the direction in the impugned awards needs to be quashed. Accordingly, the direction contained in this behalf in all the impugned awards is quashed and set aside.

Insofar as the amount of assessment and evaluation of the compensation under Section 23 of the Act is concerned, the reference court has awarded the amount of compensation at the rate of Rs. 3.00, 2.50, 2.50, 2.50 and Rs. 3.00 per sq.mt. in the aforesaid reference cases arising out of acquisition for common project which

is less than Rs. 5/- per sq.mt. awarded to the claimants in first appeals Nos.995 to 1000 of 1993 and followed in other decisions of this court. Therefore, no further submissions came to be raised on the question of assessment and evaluation of the market value of the acquired lands under Section 23 of the Act. Therefore, all the appeals are required to be dismissed and awards modified only only to the aforesaid extent of the direction contained in the impugned awards for deduction of 5% of the total amount of compensation towards contribution of Government. Rest of the awards are required to be affirmed and confirmed.

In view of practically all admitted facts and settled proposition of law, this group of appeals is required to be dismissed exercising our powers under O.41, R.33 of the Code of Civil Procedure, 1908 ('the Code') which in terms provides a provision for moulding and shaping expedient and appropriate relief to the respondents even in absence of cross-objections or counter-appeals. The said provision reads as under :

"33. Power of court of appeal:- The appellate court shall have power to pass any decree and makes any order which ought to have been passed or make and to pass or made such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal, or objections and may, where there have been decrees in cross suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the appellate court shall not make any order under Section 35-A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order".

It could very well be seen from the aforesaid provisions that the same are devised and designed so as to meet such contingencies wherein interest of justice demands moulding of relief. In view of the aforesaid decision of

the Honourable apex court, the direction contained in the impugned awards to deduct 5% of the amount of price contribution of Government out of total amount of compensation in each land reference case is obviously illegal and, therefore,, that part of the award and discussion in the impugned awards shall stand quashed with these observations. Consequently, the amount which would be payable shall be deposited within a period of three months from today before the reference court.

The appeals are dismissed with the aforesaid observations and directions leaving the parties to bear their own costs in the peculiar facts and circumstances.
